

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1269 of 1985
with
CIVIL REVISION APPLICATION No 1270 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

VANITABEN HARGOVIND KARELIA

Versus

NAGJIBHAI VIRCHAND BAVISHI
(IN CRA 1269/85)

VANITABEN HARGOVIND KARELIA

versus

PRAMOD @ PRABODH RAMJI
(IN CRA 1270/85)

Appearance:

Mr Suresh M. Shah for Petitioner
MR PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/02/2000

ORAL JUDGEMENT

1. These two revisions arising out of the common order in revision passed by the Court below involving identical question is proposed to be disposed of by common judgment.

2. Two applications under Section 13(A) of the Bombay Rent Act were moved in the trial Court by the Landlord revisionist seeking permission to carry out certain alterations in the two tenanted accommodations. Proposed alterations were for removing and dismantling and discarding mosaic tiles and roof in both the accommodations. She also wanted to replace the roof by R.C.C. slab and also she wanted to construct two rooms and kitchen together with passage on the first floor. The case of the revisionist was that these alterations are not possible unless the tenants are directed to vacate their respective accommodations for about 20 days to one month. Since the tenants did not cooperate and agree to vacate the premises for such short period, notice was given on 14.1.1981 and thereafter the applications were filed under Section 13(1)(a) of the Bombay Rent Act. These applications were opposed by the tenants respondents herein.

3. The trial Judge after considering the evidence of the parties came to the conclusion that no doubt the land lady wanted to make certain alterations and new construction, but in the eyes of law she was not entitled to recover temporary possession of the premises from the tenants. The applications were accordingly dismissed.

4. The matter was taken in revision by the landlord revisionist herein. The revisional court dismissed both the revision Nos.3/83 and 4/83 preferred by the land lady. It is, therefore, these revisions under Section 29 of the Bombay Rent Act.

5. Shri P.V.Hathi, learned Counsel for the respondent has raised preliminary objection that these revisions are incompetent and according to him if the land lady wanted to file revision it should have been filed under Section 115 of the Code of Civil Procedure. I find substance in this contention. Aid of Section 29(3) of the Rent Act cannot be taken by the appellant landlord in this case. Section 29(3) of the Rent Act provides that where no appeal lies under this section from a decree or order in any suit or proceeding the District Court may for the purpose of satisfying itself that the decree or order made was according to law, call for the

case in which such decree or order was made and pass such order with respect thereto as it think fit. An order under Section 13(A) of the Rent Act is not appealable. Consequently under Section 29(3) of the Rent Act revisions were preferred before the Lower Court. If the revisions were dismissed by the lower Court no second revision lies in the High Court under Section 29(2) of the Rent Act. Consequently, these revisions are incompetent and not maintainable.

6. Shri P.V.Hathi, for the respondents further stated that the present land lady - revisionist had already transferred the disputed accommodation in the tenancy of the two respondents on 12.5.1986 under registered Sale Deeds and notice of attornment in favour of the new landlord was already given by the present land lady to the respondents. The new landlords have not been joined in this revision as provided under order : 22 Rule 10 of the C.P.C. Consequently, these revisions become infructuous on the aforesaid information given by Shri P.V.Hathi.

7. For the reasons stated above both the revisions are dismissed as not maintainable and also as having become infructuous. No order as to costs.

sd/-

Date : February 18, 2000 (D. C. Srivastava, J.)

sas